

Administration, ~~Termination, and Close~~ Out of Contingency Contracts



Lesson Objectives

1. Describe the responsibilities of the **personnel** involved in contingency **contract administration** and the training each requires to adequately perform contract administration functions.
2. Compare and contrast the types of **contract modifications** which are used in contingency contracting and their affect on timely performance.

Lesson Objectives

3. Explain the procedures used to **transfer open contracts** and orders to other contracting offices and agencies.
4. Explain the typical sources of **unauthorized commitments** and **undefinitized actions**, and demonstrate the proper **procedures for ratification and definitization**.

Lesson Objectives

5. Discuss the typical reasons for contractor **submission of claims** and the difficulties associated with obtaining sufficient documentation for negotiation and settlement of modifications, claims, and disputes.
6. Assess a disputed contract claim and develop a position to **resolve the claim**.

Lesson Objectives

7. Discuss the mechanisms and procedures used in **monitoring contracting personnel** and maintaining adequate and required documentation of contracting actions.
8. Explain and demonstrate **how to close out contracts**, purchase orders, and other contractual instruments.

Lesson Objectives

9. Discuss and apply **judgmental, ethical, and environmental considerations** in terminating and closing out contracts.
10. Discuss **procedures** for administering and closing out contingency contracts.

Administrative Duties: CCO

- Requirements of FAR 42.302
- Ratifying unauthorized commitments
- Definitizing unpriced actions
- Negotiating contract modifications
- Monitoring contracting support personnel



Administrative Duties

Support Personnel

- Ordering Officer
 - Maintaining SF 44s and submitting monthly summary report
 - Maintaining record of purchases
 - Maintaining record of available funds
- Paying Agent
 - Strict accounting of funds
 - Register of transactions



Administrative Duties

Support Personnel

- Imprest Fund Cashiers
 - Running balance sheet
 - Maintain files of forms documenting expenditure and receipt of funds
- CORs and QAEs
 - Ensure contractor compliance with terms of contract
 - Document conformance and/or nonconformance



Contract Modifications

FAR 43.101 Definitions

- Bilateral Actions
 - Supplemental Agreement
 - Definitization
- Unilateral Actions
 - Administrative Change
 - Change Order
 - Termination Notice



Definitized vs Undefined Mods

- Forward priced bilateral agreement is preferred
- Urgency and uncertainty of requirements does not always allow
- DFARS 217.74 provides guidance for definitizing



Definitizing Unpriced Actions

- DFARS 217.74 requirements apply when purchase price exceeds SAT
- HCA approval required prior to entering into an unpriced contract action (UCA)
- Establish not-to-exceed amount when entering UCA
- Must definitize before expending 50% of NTE amount

Out of Scope Modifications

- Loosely-worded contract does not mean more items can be considered “within the general scope” of the contract
- Arise due to fluctuating requirements
- Not allowed unless they are bilateral
- Require Justification & Approval
- Typically require approval at CCO level - based on dollar value



Practical Exercise

Out-Of-Scope Modification



Ratifying Unauthorized Commitments

- Actions by government personnel can result in a “constructive change”
 - Directing particular method of performance
 - Late or defective GFE/GFM
 - Requiring higher quality than specified
 - Failure to approve time extensions
- FAR 1.602-3 policy and limitation
- Nonratifiable commitments require submission of claim for GAO review



Practical Exercise

Ratification of Unauthorized Commitment



Transfer of Contract

- Required because of:
 - Redeployment / follow-on
 - Transfer of mission
 - DCMA assignment
- T4C and new award vs trans
- Account for Gov't and KTR property
- FAR 42.202: Transfer by Letter of Delegation / issue a unilateral mod
- Consider the business environment



Practical Exercise

Transfer Of Contract Administration



Termination

Judgmental Considerations

- FAR 49 provides policy and procedures
- Consider cultural, political, and business practice differences
- Transition from hostile environment



Termination of Commercial Contracts

- Termination for Convenience
 - Favors the Contractor when compared to a FAR Part 49 T4C
- Termination for Cause
 - Favors the Government when compared to FAR Part 49.4 T4D
- Practical Implications for the CCO

Ethical Considerations

Close-outs and Terminations

- Command pressure to quickly reduce “footprint” and send troops home
- “Fair and just” versus “legally sufficient”
- Clean up after yourself
- Gifts and gratuities upon departure

Environmental Considerations

- Proper disposal of hazardous materials
- Compliance with local / OCONUS requirements
- Expectation of compliance with



Practical Exercise

Termination And Settlement



Contract Claims

- Definition - FAR 33.201
- Contingencies are ripe with conditions which increase the likelihood of claims
 - Constructive changes
 - Rapid acquisition procedures
 - Lack of sufficient documentation
 - Differing business practices
 - Wide variance between anticipated and actual requirements

Non-Contract Claims

- Personnel Claims Act (31 USC 3721)
- Military Claims Act (10 USC 2733)
- Foreign Claims Act (10 USC 2734)
- SOFA Claims
- UCMJ Article 139 Claims (10 USC 939)
- Combat Claims
- Requisitions under the International Law of War

Settlement of Claims

- Establishing negotiation position:
 - Documentation and record keeping
 - Monitoring contractors and CORs
- Cost accounting principles often much more lax than found in the US
- FAR 33.2 policy and authority
- Expect to face difficulty obtaining sufficient documentation

Record Keeping

- Basic requirements spelled out in FAR 4.8 and DFARS 204.8
- J&As and D&Fs
- Modifications and claims
 - Cost data
 - Documentation of performance
- Transfers and termination
 - FAR 4.804
 - DFARS 204.804



Closeout Requirements

Beyond Contract Files

- Ordering officer accounts
 - Original appointment order
 - Completed forms, documents, reports
 - PIIN logs
 - Unused forms
- Coordinate with J-1/AG - ensure ordering officers, imprest fund cashiers, CORs do not leave theater without C clearance



Practical Exercise

Contract Closeout



After Action Reports

- JULLS reports will be required both during and after the operation
- AARs will be required at the conclusion of the operation
- The end of the contingency is not the time to begin preparing these documents

Summary

- Initiation and award of contracts meets time demands, but proper contract administration satisfies customers
- Extensive effort required to administer and closeout contracts properly
- Consider issues requiring judgment, cultural, ethical, and environmental issues ensures smooth flow from award to closeout